In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-96

CHARLES WOMACK, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The sole issue is whether a search with a warrant of petitioner's apartment was unlawful because the address furnished to the magistrate by the officer who secured the warrant and executed it was later discovered to be incorrect.

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted of possessing a firearm which had not been lawfully registered and which failed to contain a serial number, in violation of 26 U.S.C. 5861(d) and (i). He was sentenced to concurrent terms of imprisonment for two years. The court of appeals affirmed without opinion (Pet. 7-8).

The shotgun which forms the subject matter of petitioner's prosecution was found under a bed in the course of a search of petitioner's apartment (H. 28). Petitioner's

premises were located within a Bronx, New York, apartment building containing three entrances. The middle entrance bore address 870 on the outside, while the other entrances had no address designation (H. 14).[1]

In November 1971, a reliable informant[2] told New York City plainsclothes policeman Stephen Kanapes that narcotics were being dispensed from Apartment 2B, 870 Elsmere Place, Bronx, New York, and that the apartment was reached by using the entrance farthest to the right of the apartment building (H. 18). The informant identified the seller as "Shorty," and stated that he had personally seen heroin in the apartment (H. 6). On November 25, 1971, Kanapes and his team members, Officers Hanbrecht and Krantz, conducted a surveillance of the apartment building from Kanapes' privately owned vehicle. They saw the informant and an unknown friend enter the building from the entrance to the right (H. 9). Within an hour they also observed three known narcotics addicts use the same entrance and depart (H. 18-19). Then the officers met with the informant, who said that he had gone to Apartment 2B and had seen heroin there. The informant described "Shorty" as being 5' 5" tall and weighing about 165 or 170 pounds (H. 19).

---

[1] We are lodging with the Clerk of this Court the transcript of the hearing on petitioner's pretrial motion to suppress ("H.").

[2] Patrolman Stephen Kanapes testified that in two years the informant had furnished information leading to the arrests of more than two hundred individuals; that Kanapes had personally made 35 of these arrests and members of his team 125; and that ninety percent had resulted in convictions (H. 6-8).

On November 29, 1971, Kanapes and his team members conducted another surveillance of the building and saw the informant, his friend, and six known addicts enter 870 Elsmere Place from the right entrance (H. 20). On December 6, 1971, the team observed eight known addicts enter and leave the building from the door on the right (H. 20-21). Kanapes then received information from the electric utility company that Apartment 2B, 870 Elsmere Place was registered in the name of one Louise Brooks (H. 21).

On December 9, 1971, Officer Kanapes furnished an affidavit containing his and the informant's observations to a local judge and was issued a warrant authorizing entry to search either in the day or night "apartment 2B in premises 870 Elsmere Place, Bronx County, occupied by John Doe 'Shorty' * * *" (Pet. 13-16). Later that day Kanapes told the informant to notify the policemen as soon as he knew that drugs could be found in the apartment. At midnight Kanapes received a telephone call from the informant who said that the premises should be searched. Three hours later, the search of the apartment was conducted, and forty-five glassine bags, marijuana, narcotics paraphernalia, a shotgun shell, and a shotgun were found (H. 23-28). Petitioner, who fit the description and answered to the name of "Shorty," was one of those arrested there (H. 48).

On the following day the policemen received information that an individual had been found bound, gagged and murdered in front of Apartment 2B, 866 Elsmere Place (H. 29-30). On further investigation the officers learned that the three entrances to the structure in which petitioner resided bore separate addresses; that the address of the middle entrance was 870; but the addresses of the left and right entrances, which had no visible numbers,

were 874 and 866 respectively (H. 29, 32-33). Accordingly, the entrance which they had believed to be part of 870 in fact was 866 Elsmere Place. Apartment 2B at 866 Elsmere Place had been leased to Ruby Beard, who lived there with petitioner. Petitioner had also signed the lease as "Charles Beard" (H. 65).

Petitioner's claim, that the search was fatally defective because the actual address of the premises searched (866 Elsmere Place) differed from the one described in the warrant (870 Elsmere Place), is without merit. The outward appearance of the three entrances gave no reason for the officers to believe that the address of the entrance to the right was not the same as that of the middle entrance. See *United States* v. *Santore*, 290 F. 2d 51, 66-67 (C.A. 2), certiorari denied, 365 U.S. 834. The apartment actually searched was the one intended to be searched. The officers who performed the search were thoroughly familiar with the physical location of the apartment, which was understandably described in the warrant as 870 Elsmere Place, No. 2B. It is enough if the description is such that the officer with the search warrant can with reasonable effort ascertain and identify the place intended. *Steele* v. *United States, No. 1*, 267 U.S. 498, 503. Accordingly, the post-search discovery that the exact address of petitioner's premises was misdescribed in the warrant did not invalidate the search. See *United States* v. *Melancon*, 462 F. 2d 82, 94 (C.A. 5), certiorari denied, 409 U.S. 1038; *Wangrow* v. *United States*, 399 F. 2d 106, 115 (C.A. 8), certiorari denied, 393 U.S. 933; *Hanger* v. *United States*, 398 F. 2d 91, 98 (C.A. 8), certiorari denied, 393 U.S. 1119; *United States* v. *Goodman*, 312 F. Supp. 556, 558 (N.D. Ind.); *United States* v. *Gomez*, 42 F.R.D. 347 (S.D. N.Y.).

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1973.

DOJ-1973-09